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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,868	10/12/2006	Robert Desbrandes		5857

7590 10/16/2009  
E-Quantic Communications SARL a capital variable  
Allee des Cheriniers  
Givarlais, F-03190  
FRANCE

EXAMINER
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MONDT, JOHANNES P

ART UNIT	PAPER NUMBER
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3663

MAIL DATE	DELIVERY MODE
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10/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,868	<b>Applicant(s)</b> DESBRANDES ET AL.	
	<b>Examiner</b> JOHANNES MONDT	<b>Art Unit</b> 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

This action is in response to the filing of the application on 10/12/2006.

#### *Election/Restrictions*

1. **Restriction** is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- Group I, claims 1-4, 12 and 20, drawn to a product.
- Group II, claims 5-6, drawn to a process of manufacturing said product.
- Group III, claims 7-11, 19 and 21, drawn to a process of use of said product.
- Group IV, claims 13, 15 and 16, drawn to an apparatus to implement said process of manufacture.
- Group V, claims 14, 17 and 18, drawn to an apparatus to implement said process of use.

2. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the inventions defined by said Groups do not share a special technical feature, see, for instance Bennett et al (US 5,802,439), who teaches a product consisting in (interpreted as 'of') two or more samples [Examiner Note: the reaction 5 (col. 3, l. 11) producing the isomeric nuclei directly through Bremsstrahlung for  $E > 10.6$  MeV Bremsstrahlung

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energy level (see col. 3, l. 30) extends over a finite spatial domain and results in a plurality of nuclear reactions, inherently also extending over said domain, hence a plurality of samples is contained in target region 22] containing at least one kind of excited isomer nuclides, within target 22, because said target through reaction 5 contains for  $E > 10.6 \text{ MeV}$   $^{99m}\text{Nb}$  produced directly by Bremsstrahlung in which at least one said excited isomer nuclide has at least one metastable state that de-excites by emitting gamma rays (inherent for isomeric nuclei such as  $^{99m}\text{Nb}$ ), hereafter called “deexcitation gamma rays”, characterized in that groups of two or several excited nuclei of the aforesaid excited isomer nuclides of the aforesaid samples, are entangled together (by admission of applicant, because the isomeric nuclei are produced by Bremsstrahlung) and are distributed in whole or in part of the aforementioned samples (because the entanglement occurs in said samples) the entangled samples being able to be separated in space [Ex. Note: such ability is inherent in light of the spatial separation between different portions of target 22] and presenting quantum couplings between some of the excited nuclei of the aforesaid excited isomer nuclides contained in these separated samples [Examiner Note: such quantum couplings being inherent in any entangled state: see, e.g., J. Bell, “Introduction to the hidden-variable question”, Chapter 4 in “Speakable and unspeakable in quantum mechanics”, pp. 40-50, especially section 4; and Chapter 7, “The theory of local beables”, particularly section 5]. In conclusion, claim 1 does not contain any special technical features as it does not contain anything novel. From this it follows that Groups I-V cannot possibly contain any special technical features, because their link is through claim 1.

3. Furthermore, this application contains claims directed to more than one species of the generic invention upon election of the Group I invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Ad I: Upon election of group I:

I.a: Applicants are required to elect a single species according to material embodiment of kind of isomer nuclide having at least one metastable state half-life of a duration from one microsecond to 50 years (see claim 2), i.e., applicants are required under said Rule to elect a single isomer nuclide.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: claim 1 (i.e., within the context of the Group I invention and with regard to the species only).

4. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the  $^{99m}\text{Nb}$  half life falls within the claimed range (150 s) (see WWW Table of Radioactive Isotopes for Z=41 (Niobium)).

5. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result**

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**in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

6. In light of the complicated nature of the restriction / election-of-species requirement no telephone call was made.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHANNES MONDT whose telephone number is (571)272-1919. The examiner can normally be reached on 8-17.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack W. Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHANNES MONDT/  
Primary Examiner, Art Unit 3663

October 12, 2009.